

**DATE:** October 12, 2010

**TO:** Mayor and City Council

**FROM:** Director of Finance

**SUBJECT:** Adoption of a Resolution Accepting the Report and Adopting Findings  
Confirming the City's Compliance with the Mitigation Fee Act, Related to Fees  
Collected for Development Projects

### **RECOMMENDATION**

That Council accepts the Mitigation Fee Act report, an accounting of development fees, and adopts the attached resolution making findings concerning unexpended funds.

### **BACKGROUND**

It is common for local agencies to charge fees on new development to fund construction of capital facilities that will serve the development. The AB 1600 (Cortese) portion of the Mitigation Fee Act applies to fees charged in connection with the approval of development projects to defray cost of public facilities. AB 1600 was enacted by the State Legislature in 1987, and applies to developer fees established, increased, or imposed on or after January 1, 1989.

### **DISCUSSION**

Below are the four primary requirements that the City must satisfy in order to comply with the Mitigation Fee Act, and the City's response for each requirement for the prior fiscal year.

1. Requirement: Make certain determinations regarding the purpose and use of a fee and establish a "nexus" or connection between a development project (or class of project) and the public improvement being financed with the fee. Response: For all projects requiring development fees subject to AB 1600, the City has historically complied with this requirement by establishing a connection between the development and public improvements to be financed.
2. Requirement: Segregate fee revenue from the General Fund in order to avoid commingling of capital facilities fees and general funds. Response: AB 1600 development fees are held in special deposit accounts outside of the General Fund and are therefore not comingled with other fees.
3. Requirement: The City must make findings each fiscal year describing the continuing need for the money for all fees that have been in the possession of the City for five years or more, and for

which the dollars have not been spent or committed to a project. Response: Attachment II provides detailed information for each deposit held and utilized in FY 2010, while Attachment III provides a narrative for the remaining deposits, which includes the specific public improvements for deposits that were received by the City, the relationship between the developer's project and the public improvements, and an explanation of why the funds should be retained after five years if that is the case.

4. Requirement: Refund any fees, including accumulated interest, for developer deposits in which the findings noted above cannot be made. Response: Findings have been made for the two remaining deposits. No refunds are required at this time.

The City has satisfied the Mitigation Fee Act requirements for FY 2010 and will maintain two development deposits subject to AB 1600 for future projects.

### **ECONOMIC IMPACT**

Compliance with AB1600 allows the City to hold development deposits for future improvements to the community.

### **FISCAL IMPACT**

As of June 30, 2010, the City held \$83,018 in deposits. No funds have been identified to be returned as of June 30, 2010. The deposits on hand will contribute to future improvement projects.

### **PUBLIC CONTACT**

There are no legal notice requirements for this item.

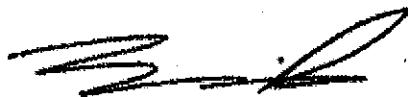
### **SCHEDULE**

This report is prepared annually in compliance Assembly Bill 1600.

*Prepared by:* Denise Blohm, Budget Administrator

*Recommended by:* Debra C. Auker, Director of Finance

Approved by:



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Fran David, City Manager

Attachments:

- Attachment I: Resolution  
Accept Report and adopt findings related to fees collected for development projects
- Attachment II: Report of Findings
- Attachment III: Project Descriptions

HAYWARD CITY COUNCIL

RESOLUTION NO. 10-\_\_\_\_\_

Introduced by \_\_\_\_\_

RESOLUTION ACCEPTING THE REPORT AND ADOPTING  
FINDINGS RELATED TO FEES COLLECTED FOR THE  
DEVELOPMENT PROJECTS SUBJECT TO THE  
REQUIREMENTS OF THE MITIGATION FEE ACT

WHEREAS, Government Code section 66006, part of the Mitigation Fee Act, which is sometimes referred to as Assembly Bill 1600, requires the City to make findings each fiscal year describing the continuing need to retain fees collected from developers, but which remain unexpended and/or uncommitted after a period of five years; and

WHEREAS, the funds maintained for such period of time must be refunded if the requisite findings cannot be made; and

WHEREAS, the City has unexpended fees that it needs to retain for future expenditures.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby accepts the report of the Director of Finance dated October 12, 2010, and adopts the findings contained therein, copies of which are attached hereto as Attachment II and Attachment III.

IN COUNCIL, HAYWARD, CALIFORNIA      October 12, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: CITY COUNCIL:  
MAYOR:

NOES: CITY COUNCIL:

ABSTAIN: CITY COUNCIL:

ABSENT: CITY COUNCIL:

APPROVED AS TO FORM:

**FY 2010  
Report of Findings**

|   | Applicable<br>Accounts—Project Name            | Name of Depositor                 | Date of Deposit | Original deposit | Balance as<br>of 6/30/09 | New<br>Deposits | Interest     | Expend In<br>FY 2010 | Refunded as<br>of 6/30/10 | Balance as of<br>6/30/10 | Summary Finding  |
|---|--|-----------------------------------|-----------------|------------------|--------------------------|-----------------|--------------|----------------------|---------------------------|--------------------------|--|
| 1 | The Plymouth Group<br>Tract 6078<br>(2280-006) | The Plymouth Group                | 7/13/1992       | 2,340            | 5,141                    | -               | 50           | 5,191                | -                         | -                        | Funds expended, Mt. Eden<br>improvements.                            |
| 2 | Sunnyside Commons<br>Tract 6391<br>(2280-008)  | The Plymouth Group                | 11/19/1992      | 3,780            | 6,133                    | -               | 59           | 6,192                | -                         | -                        | Funds expended, Mt. Eden<br>improvements.                            |
| 3 | Sunnyside Commons<br>Tract 6260<br>(2280-009)  | Curtis S. Petterson               | 9/17/1992       | 1,620            | 3,435                    | -               | 33           | 3,468                | -                         | -                        | Funds expended, Mt. Eden<br>improvements.                            |
| 4 | Sunnyside Commons<br>Tract 6645<br>(2280-015)  | The Plymouth Group                | 3/25/1994       | 3,780            | 7,464                    | -               | 71           | 7,535                | -                         | -                        | Funds expended, Mt. Eden<br>improvements.                            |
| 5 | Sunnyside Commons<br>Tract 6646<br>(2280-016)  | The Plymouth Group                | 3/25/1995       | 3,240            | 6,454                    | -               | 61           | 6,515                | -                         | -                        | Funds expended, Mt. Eden<br>improvements.                            |
| 6 | Sunnyside Commons<br>Tract 6713<br>(2280-028)  | The Plymouth Group                | 6/9/1995        | 7,920            | 14,903                   | -               | 142          | 15,045               | -                         | -                        | Funds expended, Mt. Eden<br>improvements.                            |
| 7 | Garin Crest<br>Tract 6373<br>(2280-216)        | Seeno Const.                      | 8/23/2000       | 25,000           | 35,091                   | -               | 436          | -                    | -                         | 35,527                   | Off-site drainage<br>improvements.<br><b>Retain deposit.</b>         |
| 8 | Clarendon Hills<br>Tract 5277<br>(2311-027)    | Clarendon Hills<br>Investors Inc. | 4/1/1990        | 17,263           | 46,909                   | -               | 582          | -                    | -                         | 47,491                   | Need for street extension still<br>exists.<br><b>Retain deposit.</b> |
|   | <b>TOTALS</b>                                  | <b>8 depositors</b>               |                 | <b>64,943</b>    | <b>125,530</b>           | <b>-</b>        | <b>1,434</b> | <b>43,946</b>        | <b>-</b>                  | <b>83,018</b>            |  |

**FY 2010**  
**Project Descriptions**

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*The following project information corresponds to Attachment II projects which have a remaining balance.*

1.     **Garin Crest – Tract 6373 (2280-216)** (Attachment II, number 7)

- Deposit Date: 8/23/2000
- Balance as of June 30, 2010: \$ 35,527
- The deposit is related to off-site drainage improvements for the Briargate Way basins as required per conditions of approval no. 30 of Tract 6373. The funds will be retained until these improvements are complete.

2.     **Clarendon Hills - Tract 5277 (2311-027)** (Attachment II, number 8)

- Deposit Date: 4/1/1990
- Balance as of June 30, 2010: \$ 47,491
- The deposit was collected in connection with a 285 condominium project (Phase I of a 488 unit condominium subdivision). The developer was required to deposit funds equal to the subdivision's proportionate share of the estimated cost for the extension of Vanderbilt Street to Overhill Drive. The funds will be retained until used for the extension, which is dependent upon future development.